

**RESOLUTION NO. 2022-125**

**RESOLUTION OF THE TOWNSHIP OF LITTLE EGG HARBOR, COUNTY OF OCEAN, STATE OF NEW JERSEY, AUTHORIZING THE EXECUTION OF A SETTLEMENT AGREEMENT WITH K. HOVNIANIAN AT LITTLE EGG HARBOR TOWNSHIP II, LLC**

**WHEREAS**, on March 13, 2020, Hovnianian filed an action against the Township captioned K. Hovnianian at Little Egg Harbor Township II, LLC v. Township of Little Egg Harbor, Superior Court of New Jersey, Law Division, Ocean County, Docket No.: OCN-L-000734-20 (the “Action”); and

**WHEREAS**, on April 21, 2020, the Township filed an Answer to Plaintiff’s Complaint, along with a Counterclaim and Third-Party Complaint against Travelers Casualty and Surety Company of America (“Travelers”); and

**WHEREAS**, on May 26, 2020, Hovnianian filed an Answer to the Township’s Counterclaim and Travelers filed an Answer to the Third-Party Complaint; and

**WHEREAS**, on December 16, 2020, Hovnianian filed an Amended Complaint against the Township; and

**WHEREAS**, on March 8, 2021, the Township filed an Answer to Plaintiff’s Amended Complaint, Counterclaim and Amended Third-Party Complaint against Travelers Casualty and Surety Company of America; and

**WHEREAS**, on March 29, 2021, Hovnianian filed an Amended Answer to Counterclaim and Travelers filed an Amended Answer to Amended Third-Party Complaint; and

**WHEREAS**, the Action involves Hovnianian’s claims for, inter alia, the release of performance guarantees for Harbor Bay which include the site improvements performance guarantees posted with the Township; and

**r|m|s|h|c**

Rothstein, Mandell, Strohm,  
Halm & Cipriani, P.A.  
ATTORNEYS AT LAW

98 East Water Street  
Toms River, NJ 08753

o: 732.363.0777  
f: 732.905.6555

**WHEREAS**, the Action involves Hovnanian's claims for, inter alia, the release/return of performance guarantees, including Bond Nos. 0423139, 0423140, 104877075, 104877076, 104877077, 104877078, 104877079 and 104877080 and associated cash deposits, as same relates to bonded site improvements for Phases 1, 2, 4, 5, 6, 7, 9 and 10 of Harbor Bay (the "Performance Guarantees"), along with all escrow funds relating to Harbor Bay; and

**WHEREAS**, the Township's Counterclaim and Third-Party Complaint against Hovnanian and Travelers seeks, inter alia, the following: 1) damages up to and including the cost of completion of the construction and installation of on-site improvements; 2) in the alternative, directing Hovnanian to cause the on-site improvements to be installed as required under the approvals and in compliance with the plans and specifications; and 3) posting of a maintenance bond; and

**WHEREAS**, the Township has identified various issues which it claimed needed to be addressed prior to the release of the Performance Guarantees, which issues were identified in various punchlists, including those dated 1/31/20, 6/1/20 and 9/27/21 (hereinafter "Punchlists"); and

**WHEREAS**, the Parties having agreed to settle the Action and other related issues pursuant to the terms of the Settlement Agreement, attached hereto as "Schedule A"; and

**WHEREAS**, the Township has determined that it is in the best interests of the Township to settle the pending litigation; and

**WHEREAS**, the governing body wishes to authorize the Settlement Agreement.

**NOW, THEREFORE, BE IT RESOLVED**, by the governing body of the Township of Little Egg Harbor, County of Ocean, State of New Jersey, as follows:

**r|m|s|h|c**

Rothstein, Mandell, Strohm,  
Halm & Cipriani, P.A.  
ATTORNEYS AT LAW

98 East Water Street  
Toms River, NJ 08753

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1. That the Settlement of K. Hovnanian at Little Egg Harbor Township II, LLC v. Township of Little Egg Harbor litigation, as embodied in the Settlement Agreement, attached hereto, is approved in substantially the form in which it appears as appended to this Resolution and in a form satisfactory to the Township Attorney.

2. That the Mayor is hereby authorized and directed to execute the Settlement Agreement in order to effectuate the Settlement of litigation in accordance with the terms and conditions of the Consent Order dismissing the litigation.

3. That a certified copy of this resolution shall be forwarded to the Chief Financial Officer, Township Engineer and K. Hovnanian at Little Egg Harbor Township II, LLC.

**CERTIFICATION**

I, **KELLY LETTERA, RMC**, Municipal Clerk of the Township of Little Egg Harbor, do hereby certify that the foregoing resolution was duly adopted by the Township of Little Egg Harbor Township Committee at a meeting held on the 14<sup>th</sup> day of April, 2022.



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**KELLY LETTERA, RMC**  
Township Clerk  
Township of Little Egg Harbor

**rmshc**

Rothstein, Mandell, Strohm,  
Haim & Cipriani, P.A.  
ATTORNEYS AT LAW

98 East Water Street  
Toms River, NJ 08753

o: 732.363.0777  
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## SETTLEMENT AGREEMENT AND RELEASE

**THIS SETTLEMENT AGREEMENT AND RELEASE** (the "Agreement") is made effective as of the date of the last party's execution of this Agreement ("Effective Date"), by and between K. HOVNANIAN AT LITTLE EGG HARBOR TOWNSHIP II, LLC which has a place of business located at 110 Fieldcrest Avenue, Edison, Middlesex County, New Jersey, and TOWNSHIP OF LITTLE EGG HARBOR ("Township"), a body corporate and politic located in Ocean County, State of New Jersey.

### WITNESSETH

**WHEREAS**, K. HOVNANIAN AT LITTLE EGG HARBOR TOWNSHIP II, LLC ("Hovnanian") is the developer of property commonly known as Four Seasons at Harbor Bay located in the Township of Little Egg Harbor, Ocean County, New Jersey (hereafter, this development is referred to as "Harbor Bay").

**WHEREAS**, on March 13, 2020, Hovnanian filed an action against the Township captioned: K. Hovnanian at Little Egg Harbor Township II, LLC v. Township of Little Egg Harbor, Superior Court of New Jersey, Law Division, Ocean County, Docket No.: OCN-L-000734-20 (the "Action");

**WHEREAS**, on April 21, 2020, the Township filed an Answer to Plaintiff's Complaint, along with a Counterclaim and Third-Party Complaint against Travelers Casualty and Surety Company of America ("Travelers");

**WHEREAS**, on May 26, 2020, Hovnanian filed an Answer to the Township's Counterclaim and Travelers filed an Answer to the Third-Party Complaint;

**WHEREAS**, on December 16, 2020, Hovnanian filed an Amended Complaint against the Township;

**WHEREAS**, on March 8, 2021, the Township filed an Answer to Plaintiff's Amended Complaint, Counterclaim and Amended Third-Party Complaint against Travelers Casualty and Surety Company of America;

**WHEREAS**, on March 29, 2021, Hovnanian filed an Amended Answer to Counterclaim and Travelers filed an Amended Answer to Amended Third-Party Complaint;

**WHEREAS**, the Action involves Hovnanian's claims for, inter alia, the release of performance guarantees for Harbor Bay which include the site improvements performance guarantees posted with the Township;

**WHEREAS**, the Action involves Hovnanian's claims for, inter alia, the release/return of performance guarantees, including Bond Nos. 0423139, 0423140, 104877075, 104877076, 104877077, 104877078, 104877079 and 104877080 and associated cash deposits, as same relates to bonded site improvements for Phases 1, 2, 4, 5, 6, 7, 9 and 10 of Harbor Bay (the "Performance Guarantees"), along with all escrow funds relating to Harbor Bay;

**WHEREAS**, the Township's Counterclaim and Third-Party Complaint against Hovnanian and Travelers seeks, inter alia, the following: 1) damages up to and including the cost of completion of the

construction and installation of on-site improvements; 2) in the alternative, directing Hovnanian to cause the on-site improvements to be installed as required under the approvals and in compliance with the plans and specifications; and 3) posting of a maintenance bond;

**WHEREAS**, the current balance of the Performance Guarantees for Harbor Bay are as follows:

Bond Number	Description	Current Bond Amount	Cash Amount
0423139	Phase 1	\$632,626.52	\$70,291.84
0423140	Phase 2	\$161,880.93	\$17,986.77
104877075	Phase 4	\$307,718.19	\$34,190.91
104877076	Phase 5	\$199,370.16	\$22,152.40
104877077	Phase 6	\$438,334.74	\$48,703.86
104877078	Phase 7	\$279,256.01	\$31,028.45
104877079	Phase 9	\$276,056.91	\$30,672.99
104877080	Phase 10	\$201,044.70	\$22,338.30

**WHEREAS**, the Township has identified various issues which it claimed needed to be addressed prior to the release of the Performance Guarantees, which issues were identified in various punchlists, including those dated 1/31/20, 6/1/20 and 9/27/21 (hereinafter "Punchlists").

**WHEREAS**, the Parties<sup>1</sup> having agreed to settle the Action and other related issues pursuant to the terms of this Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual promises of the Parties as set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Hovnanian and the Township hereby agree as follows:

1. Hovnanian agrees to undertake the following actions:

(i). Hovnanian agrees to undertake the following actions:<sup>2</sup>

- A. Charleston Ct. 02 – remove wood forms.
- B. Chatham Rd. 22 – remove wood forms.
- C. Galley Way 19 – remove wood forms and replace concrete sidewalk.
- D. Galley Way 42 – remove wood forms from right sidewalk replacement.
- E. Galley Way 47 – remove wood forms from right side of mailbox.
- F. Galley Way 55 – replace one dead tree.
- G. Galley Way 62 – replace one dead tree.
- H. Galley Way 71 – remove wood forms.
- I. Gimball Rd. 10 – remove wood forms.
- J. Gimball Rd. 43 – remove one dying tree.
- K. Gimball Rd. 44 – adjust inlet for drainage.

<sup>1</sup> "Parties" shall mean collectively Hovnanian and the Township.

<sup>2</sup> These actions are those identified as "yes" by Mr. Dixon in Column M on Exhibit F to the report of Jonathan P. Dixon & Associates, P.C. dated September 3, 2021 provided to the Township on September 3, 2021.

- L. Gimball Rd. 50 – replace one dead tree.
- M. Gimball Rd.55 – replace one dead tree.
- N. Hamble Rd. 48 – reset drain to proper grade.
- O. Newport Way 259 – replace one dead tree.
- P. Newport Way 263 – replace one dead tree.
- Q. Newport Way 302 – remove wood forms.
- R. Newport Way 312 – remove wood forms.
- S. Newport Way 315 – replace two dead trees.
- T. Newport Way 320 – remove wood forms.
- U. Newport Way 330 – remove wood forms.
- V. Newport Way 341 – replace one dead tree.
- W. Newport Way 359 – replace one dead tree.

(II). Hovnanian will take the following actions:

- A. One round of crack sealing for the roads in Phases 1, 4 and 10 only. Attached hereto as Exhibit A and highlighted in yellow are the areas of the roads subject to this crack sealing.
- B. Evaluate and address/repair, as needed, the sinkhole located near 316 Newport Way near the entrance to Basin B, but in the roadway.

(III). AS TO BASINS A AND B:

- A. Hovnanian will undertake the following actions with respect to Basins A and B:
  - 1. Basin A – Forebay Restoration
    - a. Remove silt from forebay and dispose off-site
    - b. Install K-5 sand and establish grade
    - c. Establish slopes do to erosion and install erosion fabric
    - d. Install 3-5" clean stone around basin slope to avoid recurring erosion
    - e. Replenish stone at inlet
  - 2. Basin A – Maintenance
    - a. Remove silt from bottom of basin
    - b. Kill all vegetation with vinegar spray
    - c. Disc soil
    - d. Establish grade
    - e. Replenish stone at spillway
  - 3. Basin B – Forebay and Basin Maintenance
    - a. Remove debris throughout basin and berms and entrance at street (B1)<sup>3</sup>
    - b. Stabilize all areas where erosion occurs (B2)

<sup>3</sup> References to (B\_), (C\_), and (D\_) herein refer to the items on the Punchlists dated 1/31/20 and 6/1/20 for the corresponding Basins B, C and D.

- c. Clean yard inlet and pipe adjacent to sediment forebay that contains an excessive amount of sediment (B3)
- d. Remove excessive vegetation (B4)
- e. Stabilize and regrade to eliminate ponding behind concrete apron at Basin B entrance (B6)
- f. Clean forebay of vegetation and silt and dispose off-site (B1)
- g. Kill all vegetation with vinegar spray (B4)
- h. Disc basin bottom and grade.

(IV). AS TO BASINS C AND D

(A). Hovnanian will undertake the following actions with respect to Basins C and D:

1. Basin C/D – Forebay Restoration

- a. Excavate silt and remove from site (C1 and C2)
- b. Replenish stone at inlet (C2)
- c. Re-establish slopes and install erosion fabric (C2)
- d. Install K-5 in bottom (C2)

2. Basin C – Maintenance

- a. Remove debris throughout basin and berms and in forebay area (C1)
- b. Stabilize all areas where erosion occurs (C3)
- c. Kill all vegetation with vinegar (C8)
- d. Disc bottom of basin
- e. Finish grade and laser grade
- f. Repair wash-outs on slopes (C3)
- g. Remove concrete that has separated from the spillway and dispose off-site; install new concrete with steel rods at 18" on center spacing drilled and epoxied to tie into spillway. No action is required for small cracking. (C4)
- h. Install missing trash rack between Basin C and D. (C5)
- i. Stabilize and define maintenance access road (C6)

3. Basin D – Maintenance

- a. Remove debris throughout basin and berms including fine sediment, vegetation, construction debris and trash (D1)
- b. Stabilize erosion at the bottom of the spillway between Basin C and D and install additional rip rap (D2)
- c. Remove large vegetation (D11)
- d. Kill all vegetation with vinegar (D1 and D11)
- e. Disc bottom of basin (D12)
- f. Finish grade and laser grade
- g. Clean low flow channel, low flow channel shall be flush with basin bottom (D3 and D4)

- h. Stabilize eroded areas (D5)
- i. The gap at the expansion joint will be filled after applying a backer material at the joint. (D6)
- j. Remove and replace rip rap at outlet structure adjacent to County Rt 539 as per plan (D7)
- k. Repair sinkhole at top of the berm between Basin C and D (D8)
- l. Stabilize and define maintenance access road (D9)

(B). Basin C/D Evaluation:

Upon completion of the work identified in Section II(A) above, Hovnanian's engineer will regularly monitor the condition of Basins C and D for up to one year to determine if they are draining as per the intended design. During this monitoring period, Hovnanian's contractor will perform visual evaluations of the basins after each severe rain event to remove any debris, repair any erosion, and perform other repairs as needed. They will also disc the bottom of the basins on a bi-monthly basis from March through October.

Upon conclusion of the evaluation period, Hovnanian's engineer will prepare a remediation plan to address any conditions that are preventing the basins from draining as per the intended design, if it is determined that remediation is necessary. If the basins are found to be performing as intended, the engineer will provide a letter certifying their evaluation.

2. **Release of Performance Bonds:** Once Hovnanian has completed the items identified in Sections 1(I), 1(II), 1(III) and 1(IV)(A) above, the Performance Guarantees for Phases 1, 2, 4, 5, 6, 7, 9 and 10 of Harbor Bay shall be released subject to the conditions set forth in paragraph 3 below. Hovnanian will not be required to undertake any other items or actions identified on the Punchlists with respect to Phases 1, 2, 4, 5, 6, 7, 9 and 10, including any other items or actions for Basins A, B, C and D except as expressly set forth herein.

3. As a condition of the release of the aforesaid Performance Guarantees provided in Section 2 above, Hovnanian agrees to post a Surety Performance Guarantee with respect to Hovnanian's obligations regarding Section 1(IV)(B) concerning the Basin C/D Evaluation and the performance of any remediation plan associated therewith (if any is required) in the amount of \$200,000 (hereafter "Basin C/D Settlement Surety Bond"). In the event a remediation plan is prepared and the estimated cost of the remediation plan (plus an additional 20% as permitted under the MLUL) is found to be in excess of the \$200,000 Basin C/D Settlement Surety Bond, Hovnanian shall revise the Basin C/D Settlement Surety Bond to include such amount in excess of the \$200,000. Upon Hovnanian's engineer certifying that either: (a) no remediation is necessary; or (b) any necessary remediation has been completed, the Basin C/D Settlement Surety Bond is thereby released.



4. **Release by the Township:** With the exception of the actions set forth in Sections 1(I), 1(II), 1(III) and 1(IV) above, the Township hereby absolutely releases and discharges Hovnanian, Travelers and any and all other sureties that relate to any of the Performance Guarantees associated with Harbor Bay, and any of Hovnanian's, Travelers' or any other sureties' parents, subsidiaries, subcontractors, affiliates, agents and related entities and any and all past and present officers, directors, shareholders, agents, attorneys, subcontractors, or employees of any said entities, including but not limited to K. Hovnanian Companies, LLC, Hovnanian Enterprises, Inc., and any other K. Hovnanian Company (hereafter collectively referred to as "Hovnanian Releasees"), from and against any and all liabilities, damages, promises, covenants, agreements, causes of action, judgments, claims, or determinations in law or in equity or any costs or expenses in any way related to Harbor Bay, including, but not limited to, all work required under the approvals for Harbor Bay, any Developer agreement regarding Harbor Bay, performance guarantee obligations, maintenance guarantee obligations, professional fees, engineering fees, inspection fees and attorney's fees, arising from or in connection with any and all claims which the Township shall or may currently have against the Hovnanian Releasees, arising out of and/or relating to the construction and installation of Harbor Bay, and the bonded improvements of Harbor Bay. Notwithstanding the foregoing, the Parties understand and agree that this release does not release Hovnanian, from its performance guarantee obligations to the Township with respect to the actions required to be performed by Hovnanian in Section 1 above.

5. **Release by Hovnanian:** Hovnanian hereby absolutely releases and discharges the Township and its past and present officers, Township Council Members, and their respective agents, attorneys, subcontractors or employees, from and against any and all liabilities, damages, promises, covenants, agreements, causes of action, judgments, claims, or determinations in law or in equity or any costs or expenses in any way related to Harbor Bay, known or unknown, which existed through the execution of this Agreement, including, but not limited to, all claims set forth in the Action filed by Hovnanian.

6. The Parties acknowledge and agree that they each shall be responsible for their own legal and engineering fees incurred in connection with prosecuting and defending the aforesaid Action and the preparation of this Agreement. The Parties acknowledge and agree that there shall be no professional fees owed to the Township by Hovnanian in connection with the bonded improvements of Harbor Bay, except as same relate to: (a) the inspection fees associated with the Actions to be performed by Hovnanian in Section 1 above; and (b) the payment by Hovnanian to the Township of \$4,365.25, within (10) days after the Effective Date, in full and final satisfaction of all currently outstanding engineering fees for services provided for Harbor Bay. The Township hereby agrees not to deduct and/or offset money on deposit with the Township in connection with any other professional services related to the bonded improvements of Harbor Bay which have been incurred through the Effective Date of this Agreement. The Parties understand and agree that the Township shall be entitled to charge the normal inspection fees associated with Hovnanian's actions required under Section 1 of this Agreement and that Hovnanian, within ten (10) days after the Effective Date, shall deposit with the Township \$10,000 to be utilized strictly for these anticipated inspection fees.

7. The Township shall adopt an appropriate resolution accepting the terms of this Agreement and authorizing an appropriate representative to execute this Agreement and any and all other documentation necessary to effectuate the terms of the settlement.

8. Hovnanian, the Township and Travelers agree to terminate, discontinue, and dismiss the Action in its entirety and in each and every aspect by and through the execution of a Stipulation of Dismissal with prejudice and without costs, which Stipulation of Dismissal shall be held in escrow by counsel for Hovnanian pending Hovnanian's receipt of this Agreement fully executed by all parties.

9. If any party to this Agreement is required by this Agreement to perform any actions after the date hereof or to undertake any actions to conform to the terms of the Agreement, then the party seeking performance from any other party shall be entitled to commence proceedings to compel such performance.

10. The Parties acknowledge and agree that the mutual promises and covenants contained herein constitute good, valid and sufficient consideration for this Agreement.

11. It is expressly understood and agreed that the agreements set forth herein are compromises of disputed claims and that the terms of this Agreement shall not be construed as an admission by any Party of any liability or acts of wrongdoing, nor shall it be considered to be evidence of such liability or wrongdoing.

12. This Agreement may be executed by the Parties in counterpart, each of which shall be binding as if executed as a single document. A signature made on a faxed or electronically mailed copy of the Agreement or a signature transmitted by facsimile or electronic mail will have the same effect as the original signature.

13. If any provision of this Agreement shall be held to be invalid, the Parties agree to request that the Court, making such determination, amend the invalid provision so as to be valid and maintain, to the maximum extent possible, the original intent of the provision and that the Court also amend any other provisions as shall be necessary or advisable to preserve the nature of this Agreement and the release herein contained, and the remainder of this Agreement shall remain in full force and effect.

14. This Agreement shall be construed in accordance with the laws of the State of New Jersey.

15. In the event of any action relating to the enforcement of this Agreement, the prevailing party shall be entitled to payment from the non-prevailing party of all reasonable attorneys' fees, court costs and expenses incurred.

16. This Agreement, including the preambulatory clauses hereinabove adopted by the Parties, constitutes the full and final settlement, resolution, accord, and satisfaction of, and release from, all claims, demands, causes of action, and liabilities that any Party may have against any of the other Parties in connection with the Action.

17. With regard to the matters that are the subject of this Agreement, this Agreement constitutes the entire agreement between the Parties and neither this Agreement nor any term hereof may be orally changed, waived, discharged, or terminated, and may be amended or modified only by a written agreement between the Parties. The requirement for such a writing shall apply to any waiver of

the requirement of a written modification pursuant to this Section and this is an essential term of this Agreement.

18. The Parties, with advice of counsel, have freely, voluntarily and without duress or coercion, entered into this Agreement, and its terms are not based upon any representations of any Party or counsel of any Party hereto, except as are contained in this Agreement. As represented and warranted herein, this Agreement has been reviewed by legal counsel for the respective Parties prior to its execution by the Parties, and none of the Parties shall be entitled to have any language of this Agreement construed against any other Party in the event of any dispute between them relating to this Agreement whether based upon the identity of the drafter or any other basis.

19. This Agreement has been entered into in reliance upon the provisions of Rule 408 of the New Jersey Rules of Evidence which precludes the introduction of evidence regarding settlement negotiations and/or agreement(s) in any legal proceeding(s). Evidence relating to the negotiation, terms, or facts of this Agreement shall not be admissible by any Party in any legal proceeding(s). This Agreement shall not be filed with any Court or agency unless necessary to enforce its terms. Notwithstanding the same, this Agreement shall be admitted into any legal proceeding which may be brought for the sole purpose of enforcing any or all of the terms and/or provisions contained in this Agreement.

20. This Agreement shall be binding upon the Parties and their respective owners, members, council members, managers, predecessors, successors, heirs, assigns, agents, attorneys, directors, officers, officials, employees, representatives, divisions, parents, affiliates and subsidiaries.

**IN WITNESS WHEREOF**, each party hereto, being authorized to do so and intending to be legally bound hereby, has duly executed and entered into this Settlement Agreement and Release as of the date first written above.

**Attest/Witness:**

**K. HOVNIANIAN AT LITTLE EGG HARBOR  
TOWNSHIP II, LLC**


\_\_\_\_\_

BY:



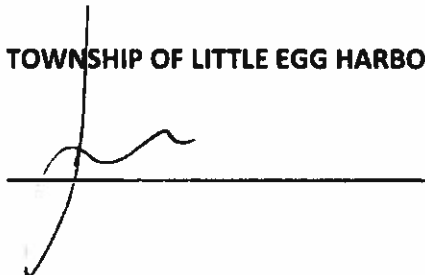
Michael Weisslitz, Northeast Division President

Dated: 5/10/2022

  
Dated: 5/12/22

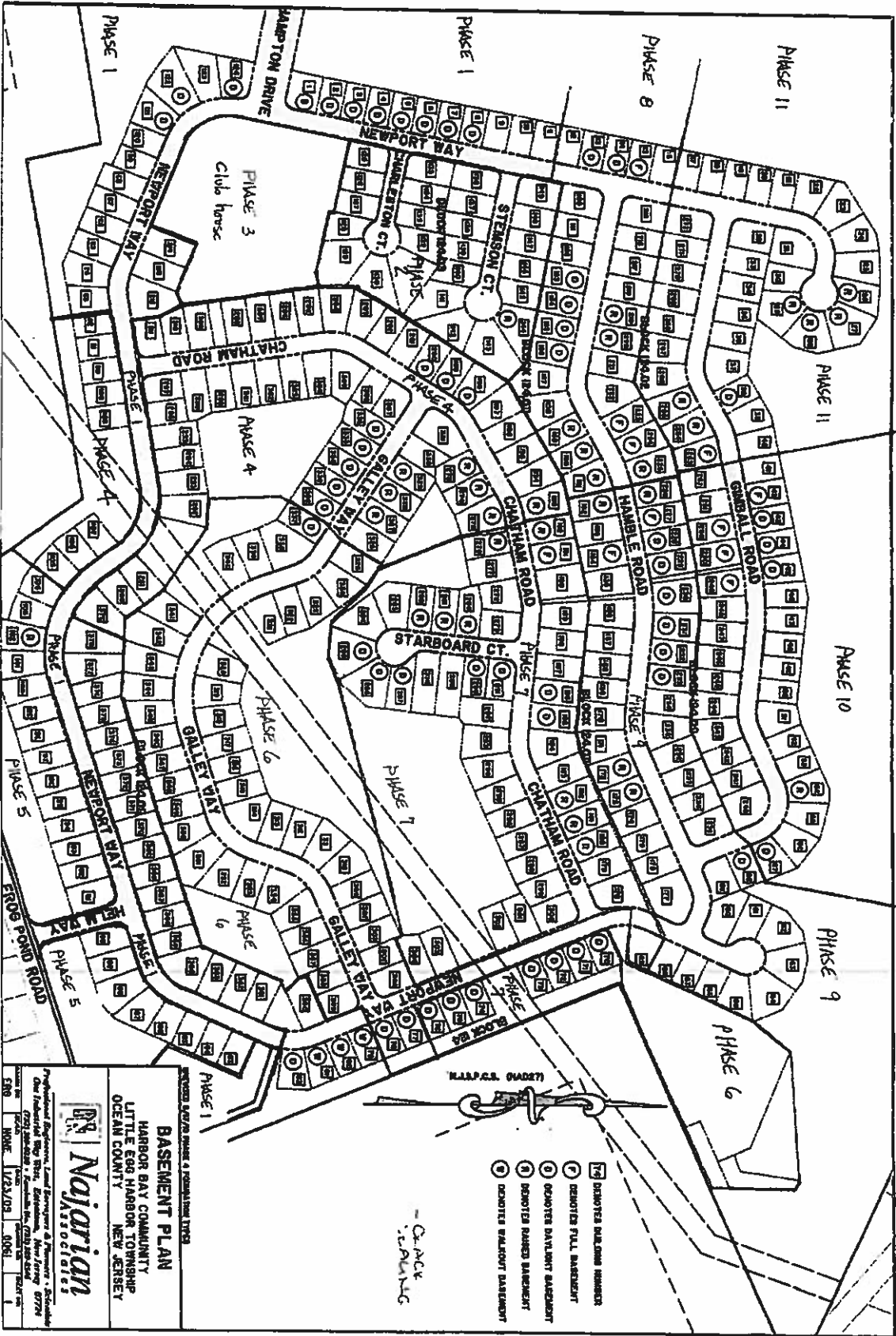
**TOWNSHIP OF LITTLE EGG HARBOR**

BY:



# Exhibit A

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- ☐ DETACHED BASEMENT
- DETACHED FULL BASEMENT
- ◇ DETACHED DAYLIGHT BASEMENT
- △ DETACHED RAISED BASEMENT
- ◻○ DETACHED WALKOUT BASEMENT

Scale  
1" = 20'

**BASEMENT PLAN**  
 HARBOR BAY COMMUNITY  
 LITTLE EGGS HARBOR TOWNSHIP  
 OCEAN COUNTY, NEW JERSEY

**Najarian**  
 Associates

Professional Engineers, Land Surveyors & Planners • Architects  
 One Industrial Way Bldg., Suite 200, New Jersey 07740  
 Phone: (908) 426-2222 • Fax: (908) 426-2222  
 NJ REG. NO. 123456789 • NJ REG. NO. 123456789  
 NJ REG. NO. 123456789 • NJ REG. NO. 123456789